

Message Text

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C O N F I D E N T I A L SECTION 01 OF 03 GENEVA 06887

E.O. 11652: GDS
TAGS: PLOS
SUBJECT: LOS CONFERENCE - MAY 3 HIGHLIGHTS

BEGIN SUMMARY: THE CONFERENCE MET IN PLENARY SESSION TO HEAR REPORTS FROM THE CHAIRMAN OF THE MAIN COMMITTEES AND NEGOTIATING GROUPS. THERE WAS CONSENSUS THAT A NUMBER OF NEGOTIATING GROUPS NEEDED MORE TIME AND AMERASINGHE INDICATED THAT ADDITIONAL MEETINGS WOULD BE ARRANGED. THE SOMEWHAT HIGH-HANDED CHAIRMANSHIP OF JUDGE MANNER OF FINLAND (NG-7) CAME UNDER ATTACK BY A SPOKESMAN FOR 27 STATES. IN RESPONSE TO PERU AND TANZANIA, AMERASINGHE SAID NO CHANGES TO THE ICNT WOULD BE MADE BEFORE DECISIONS BY THE PLENARY. EXPERTS ON FINANCIAL ARRANGEMENTS AND IN NG-5 CONTINUED WORK, WHILE COMMITTEE II DISCUSSED STRAITS. END SUMMARY.

1. THE CONFERENCE MET IN PLENARY SESSION TO LISTEN TO
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THE REPORTS OF THE CHAIRMEN OF THE MAIN COMMITTEES AND THE NEGOTIATING GROUPS. AMERASINGHE ANNOUNCED THERE WOULD BE NO DISCUSSION OR DEBATE ON THESE INTERIM REPORTS. TWO FORMAL PUBLIC MEETINGS OF THE PLENARY ARE SCHEDULED FOR MAY 5 TO DISCUSS FINAL CLAUSES AND THE PREAMBLE. NO OFFICIAL MEETINGS ARE PLANNED FOR MAY 4 (ASCENSION THURSDAY) BUT INFORMAL MEETINGS MAY BE HELD. AMERASINGHE

INDICATED THAT SEVERAL CHAIRMEN HAD ALREADY APPROACHED HIM TO REQUEST MORE TIME FOR THE NEGOTIATING GROUPS AND HE PLANNED TO MAKE AVAILABLE ADDITIONAL MEETINGS SO REQUESTED.

2. COMMITTEE ONE - REGIME FOR THE DEEP SEABEDS NG-3 -
ORGANS OF THE AUTHORITY

(A) CHAIRMAN ENGO REVIEWED THE ACTIVITIES OF THE NEGOTIATING GROUP OVER WHICH HE PRESIDES AND NOTED IT HAD DISCUSSED:

- I. COMPOSITION OF THE COUNCIL,
- II. VOTING SYSTEM IN THE COUNCIL, AND
- III. INTERRELATIONSHIP BETWEEN THE POWERS AND FUNCTIONS OF THE ASSEMBLY AND COUNCIL.

NEGOTIATIONS ARE TO CONTINUE ON (I) AND (II) WHILE ON (III) HE SAID IT WAS UNDESIRABLE TO OPEN A PANDORA'S BOX OF DEBATE. ON THE FIRST COMMITTEE PROCESS, ENGO WANTS THE RESULTS OF ITS NEGOTIATING GROUPS TO REACH THE PLENARY AS A COLLECTIVE WHOLE.

(B) NG-1 - SYSTEM OF EXPLORATION AND EXPLOITATION AND RESOURCE POLICY.

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THE OPEN-ENDED NEGOTIATING GROUP LED BY NJENGA HELD TWELVE MEETINGS AND HE CIRCULATED PERSONAL RE-DRAFTS ON ARTICLES 140, 143, 144, 150, 151, 153, AND ANNEX II, PARA 4(C)(II). (COPIES POUCHED TO DEPARTMENT.) DISCUSSION HAD NOT YET BEEN COMPLETED ON THE PROPOSALS (NOR HAS THE TECHNICAL GROUP SUBMITTED ITS REPORT) SO NJENGA ASKED FOR MORE TIME TO HOLD NG-1 MEETINGS.

(C) NG-2 - FINANCIAL ARRANGEMENTS

THE OPEN-ENDED NEGOTIATING GROUP LED BY KOH CONSIDERED:

- I. FINANCIAL ARRANGEMENTS OF THE AUTHORITY,
- II. FINANCIAL ARRANGEMENTS OF THE ENTERPRISE, AND
- III. FINANCIAL TERMS OF CONTRACTS.

DISCUSSION HAS BEEN COMPLETED ON (I) AND (II) AND KOH EXPECTS TO FINISH TOPIC (III) BY FRIDAY.

3. COMMITTEE TWO

CHAIRMAN AGUILAR SAID HIS COMMITTEE HELD SEVERAL

INFORMAL MEETINGS TO ALLOW DISCUSSION OF "MISCELLANEOUS PROPOSALS" AND THE SUBMISSION OF AMENDMENTS ON ISSUES OF SPECIAL CONCERN TO STATES. (THIS PROCESS HAS AVOIDED THE FORMAL RE-OPENING OF SUCH ITEMS AS THE STRAITS ARTICLES WHILE ALLOWING DELEGATIONS TO FEEL THEIR VIEWS HAVE BEEN HEARD.)

(A) NG-6 - REVENUE SHARING AND OUTER LIMITS OF THE CONTINENTAL SHELF

NG-6 (OF WHICH AGUILAR IS ALSO CHAIRMAN) HELD FIVE, INFORMAL OPEN-ENDED MEETINGS AT WHICH THERE WERE 70 INTERVENTIONS. THE QUESTION OF DEFINING THE SHELF IS IMPORTANT BECAUSE THE POTENTIAL FOR SEABED HYDROCARBONS IS HIGHEST

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ON THE SHELF AREA. THUS AN EXTENSION OF COASTAL STATE JURISDICTION WOULD DIMINISH ANY POSSIBLE REVENUE SHARING AMONG NON-COASTAL STATES. DEBATE CENTERED ON THE IRISH FORMULA AND A SOVIET SHELF PROPOSAL. (THE IRISH FORMULA PROVIDES A LIMIT BASED ON A DEPTH OF SEDIMENT OR SIXTY MILES FROM THE FOOT OF THE SLOPE. THE SOVIET SUGGESTION WOULD PUT THE LINE AT ONE HUNDRED NAUTICAL MILES FROM THE OUTER LIMIT OF THE TWO HUNDRED MILE ECONOMIC ZONE.) AGUILAR OPINED THAT IT WOULD BE WORTHWHILE TO CONTINUE THE NG-6 DISCUSSIONS.

(B) NG-4 - LL/GDS RIGHT OF ACCESS TO LIVING RESOURCES

OF THE ECONOMIC ZONE.

CHAIRMAN NANDAN SAID NG-4 HELD SEVEN MEETINGS ON:

I. WHETHER "RIGHT" IS THE ACCURATE TERM FOR
LL/GDS ACCESS,

II. SURPLUS OF THE TOTAL ALLOWABLE CATCH,
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III. WHAT TO DO ABOUT DEVELOPED LL/GDS, AND
IV. A DEFINITION OF GEOGRAPHICALLY DISADVANTAGED
STATE.

ON MAY 1, NANDAN PRESENTED SUGGESTED COMPROMISE FORMULAE
ON ARTICLES 62(2), 69, AND 70 WHICH ARE NOW BEING CON-
SIDERED. HE ASKED FOR MORE TIME FOR NG-4 TO MEET.

(C) NG-5 - SETTLEMENT OF DISPUTES IN THE ECONOMIC
ZONE.

CHAIRMAN STAVROPOLOUS' GROUP DISCUSSED ARTICLE 296(4)
BUT DID NOT AGREE ON WHAT CATEGORIES OF DISPUTES SHOULD
BE OR SHOULD NOT BE EXCLUDED. MOVING ON TO COMPULSORY
CONCILIATION, THE CHAIRMAN FEELS NG-5 MAY BE CLOSE TO
AGREEMENT AND HE ASKED FOR MORE TIME TO NEGOTIATE.

(D) NG-7 - DELIMITATION OF MARITIME BOUNDARIES AND
DISPUTE SETTLEMENT THEREON.

CHAIRMAN MANNER SAID NO TEXT PRESENTED SO FAR ON THE
DELIMITATION ARTICLE OFFERED A SUBSTANTIAL PROSPECT FOR
COMPROMISE. HE SUGGESTED CONTINUATION OF DISCUSSIONS
ON THE BASIS OF HIS PROPOSALS (ON ARTICLES 15, 74, 83
AND 297) AND THE ICNT.

COMMENT: MANNER'S RATHER HIGH-HANDED APPROACH THROUGHOUT
THE NG-7 NEGOTIATIONS HAS CAUSED UNNECESSARY DIFFICULTY.
AT THE PLENARY, IRELAND, SPEAKING FOR TWENTY-SEVEN
DELEGATIONS, ASKED TO MOVE THE DISCUSSIONS OUT OF NG-7
AND INTO COMMITTEE II OR THE PLENARY. AMERASINGHE SAID
HE WOULD DISCUSS THIS WITH MANNER AND AGUILAR. MANNER'S
REMOVAL MIGHT FACILITATE FURTHER NG-7 WORK BUT GIVEN THE
LATE HOUR IT IS LIKELY AGUILAR AND AMERASINGHE MAY PREFER
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TO LET THE PROBLEM EXPIRE WITHOUT HAVING TO ACT. END
COMMENT.

4. COMMITTEE THREE

CHAIRMAN YANKOV REVIEWED THE INFORMAL NEGOTIATIONS ON THE ICNT PARTS XII, XIII, AND XIV (POLLUTION, MARINE SCIENTIFIC RESEARCH AND TRANSFER OF MARINE TECHNOLOGY). HE SAID THE MAJORITY OF THE COMMITTEE THOUGHT IT UNWISE TO UPSET THE "DELICATE BALANCE" OF THESE SECTIONS; BUT HIS COMMENTS SHOWED THERE HAD BEEN MANY INTERVENTIONS AND A NUMBER OF PROPOSALS FOR SIGNIFICANT CHANGES. WHILE YANKOV'S STATEMENT WAS NOT HELPFUL ON THE MARINE SCIENCE AND TRANSFER OF TECHNOLOGY PROBLEMS, HE DID AT LEAST ASK FOR MORE NEGOTIATING TIME, ESPECIALLY ON POLLUTION ISSUES.

5. DRAFTING COMMITTEE

CHAIRMAN BEESLEY (CANADA) SAID HIS GROUP HAD BEGUN INFORMAL PREPARATIONS OF THE WORK THAT WOULD BE NECESSARY FOR THE FINAL DRAFTING STAGES.

6. FURTHER CONFERENCE WORK - IN RESPONSE TO QUESTIONING BY TANZANIA AND PERU, AMERASINGHE SUGGESTED THAT THE NEGOTIATING GROUPS MEET UNTIL MAY 10. THEN FULL COMMITTEES MUST HAVE AN OPPORTUNITY TO CONSIDER THE RESULTS COME A REVISION OF THE ICNT. AMERASINGHE EMPHASIZED THAT THE DELEGATES MUST LEAVE WITH A REVISED ICNT, TO THE EXTENT POSSIBLE BASED ON NEGOTIATIONS. HE SUGGESTED MAY 18 AS THE DAY TO DISCUSS THE NEXT CONFERENCE SESSION, AND SAID IT IS "UNLIKELY" THERE WILL BE TIME FOR FORMALIZATION OF THE TEXT.

7. AT A SEPARATE MEETING OF THE NG-2 FINANCIAL ARRANGE-

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MENTS EXPERTS' GROUP, THE U.S. SUBMITTED ITS DRAFT ON FINANCIAL ARRANGEMENTS WHICH WAS TAKEN UNDER ADVISEMENT FOR CLOSER STUDY. (COPY POUCHED DEPARTMENT.) THE SOVIET UNION'S PROPOSAL FEATURED A 7.5 PERCENT ROYALTY ON GROSS RECEIPTS IF THERE WERE NO PROFIT SHARING, AND A 5 PERCENT ROYALTY PLUS PROFIT IMPUTATION FORMULA (WHICH IN EFFECT ADDS ANOTHER 2.5 PERCENT OF GROSS RECEIPTS) IF PROFIT SHARING COMES INTO EFFECT. UNDER THE SOVIET PROFIT SHARING OPTION, THE VALUE WHICH IS IMPUTED TO THE MINING ACTIVITY IS THE SAME AS THAT WHICH THE U.S. IMPUTES I.E., 20 PERCENT.

8. THE INDIANS SUBMITTED A NEW PLAN WITH A 10 PERCENT ROYALTY ON GROSS RECEIPTS AND 50 PERCENT PROFIT SHARING. ALTHOUGH NOT ECONOMIC, THIS IS AN IMPROVEMENT OF THEIR POSITION, BUT, MORE IMPORTANTLY, AMBASSADOR JAGOTA INDICATED A WILLINGNESS TO COMPROMISE FURTHER.

9. KOH IS ANXIOUS TO FINISH THE WORK IN TIME TO
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REPORT TO COMMITTEE I ON MAY 5 AND SO HAS SCHEDULED MEETINGS ON MAY 4.

10. COMMITTEE II DISCUSSED THE STRAITS ARTICLES AND APPROXIMATELY TWENTY STATES PROPOSED OR SUPPORTED AMENDMENTS DESIGNED TO MODIFY THE ICNT. SPAIN AND MOROCCO, AS EXPECTED, WANT TO OVERTURN THE CONSENSUS REGIME NOW IN THE ICNT (WHICH THE U.S. AND MANY OTHERS SUPPORT). IN RESPECT TO OVERFLIGHT, HOWEVER, THE MOROCCAN PROPOSALS WOULD HAVE A LESSER IMPACT, GREECE WANTED TO MODIFY OVERFLIGHT, BUT WAS STRONGLY CHALLENGED BY TURKEY. YUGOSLAVIA SOUGHT TO ENSURE AND REINFORCE THE RIGHTS OF FREE TRANSIT WHERE ALTERNATE HIGH SEAS OR EEZ ROUTES ARE USED IN STRAITS PASSAGE (ARTICLE 36); AND TO SECURE FREE TRANSIT AND OVERFLIGHT IN OUTLETS USED FOR INTERNATIONAL NAVIGATION AND CONNECTING ENCLOSED AND SEMI-ENCLOSED SEAS WITH OTHER SEAS. THIS MOVE WAS DENOUNCED VOCIFEROUSLY BY ALBANIA.

11. THE GDR (AT SOVIET BEHEST) AND JAPAN STRONGLY OBJECTED TO THE SPANISH AND MOROCCAN AMENDMENTS, NOTING THAT THE

ICNT STRAITS PACKAGE REPRESENTED A DELICATE COMPROMISE WHICH RESULTED FROM PROTRACTED NEGOTIATIONS AMONG INTERESTED STATES. MOST IMPORTANTLY, IT WAS CLEAR TO ALL THAT NO SINGLE AMENDMENT OR PACKAGE OF AMENDMENTS ELICITED SUPPORT SUFFICIENT OR SUBSTANTIAL ENOUGH TO WARRANT ANY CHANGES IN THE CURRENT TEXT. (COMPLETE JAPANESE STATEMENT SENT SEPTTEL.)

12. SOME OF THE GROUND GAINED ON MAY 2 IN THE NG-5 SMALL WORKING GROUP WAS LOST TEMPORARILY ON MAY 3 WHEN SWAZILAND (SPEAKING FOR THE LL/GDS) OBJECTED TO "MANIFESTLY AND GROSSLY," IN THE SUBPARAGRAPH WHICH WOULD HAVE SUBJECTED CONFIDENTIAL

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TO COMPULSORY CONCILIATION ALL FAILURES TO COMPLY WITH OBLIGATIONS CONCERNING THE CONSERVATION OF LIVING RESOURCES. SWAZILAND SAID THE PARAGRAPH WOULD BE TOO RESTRICTED IF ANY MANIFEST AND GROSS CONSERVATION VIOLATIONS WERE SUBJECT TO JURISDICTION. WITH THIS OPENING, MEXICO (FOR THE COASTAL STATES) REINTRODUCED THE EVEN MORE RESTRICTED LANGUAGE OF THE CASTANEDA PROPOSAL OF JULY 1977. (THIS TEXT LIMITS CONCILIATION TO ONE SITUATION: GROSS AND MANIFEST VIOLATIONS OF ARTICLE 61(2) WHICH ENDANGER SPECIES BY OVEREXPLOITATION.) PRIVATE EVENING NEGOTIATIONS MAY 3 TRIED TO RESTORE THE MAY 2 COMPROMISE, BUT HAD NOT YET BEEN SUCCESSFUL.

13. COMPROMISE WAS REACHED, HOWEVER, ON EXPANSION OF PROTECTION AGAINST COASTAL STATES FAILURE TO EXERCISE ITS DISCRETIONARY POWERS IN A FEW LIMITED INSTANCES. AS A FIRST STEP, IT WAS PROVISIONALLY AGREED THAT A STATE COULD RESORT TO COMPULSORY CONCILIATION WHEN "A COASTAL STATE HAS ARBITRARILY REFUSED, UPON REQUEST OF ANOTHER STATE, TO DETERMINE ITS ALLOWABLE CATCH AND ITS CAPACITY TO HARVEST THE LIVING RESOURCES IN RESPECT OF STOCKS WHICH THAT OTHER STATE IS INTERESTED IN FISHING."

14. THE COASTAL STATES INDICATED THAT THEY WOULD CONSIDER AN LL/GDS SUGGESTION FOR COMPULSORY CONCILIATION IN CASES WHERE IT IS ALLEGED THAT A COASTAL STATE "HAS ESTABLISHED REGULATIONS MANIFESTLY INCONSISTENT WITH THE PRESENT CONVENTION TO THE DETRIMENT OF" THE COMPLAINING STATE. THIS CLAUSE - ALONG WITH A TEXT CONCERNING COASTAL STATE FAILURE TO NEGOTIATE UNDER ARTICLES 69 AND 70 AND ONE CONCERNING DISPUTES RELATING TO AGREEMENTS CONCLUDED PURSUANT TO ARTICLES 62, 69 AND 70 - ARE TO BE CONSIDERED BY MEETINGS OF THE COASTAL STATES AND LL/GDS GROUPS ON MAY 6. RICHARDSON

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